

**NETHERLANDS  
ARBITRATION INSTITUTE**

ARBITRATION RULES  
In force as of 1 January 2010

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## NAI ARBITRATION CLAUSE - ENGLISH TEXT

### **Recommended text arbitration clause:**

“All disputes arising in connection with the present contract, or further contracts resulting therefrom, shall be finally settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute (Nederlands Arbitrage Instituut).”

### **Additionally, various matters may be provided for (see Introduction, §3.5):**

- “The arbitral tribunal shall be composed of one arbitrator/ three arbitrators.”
- “The place of arbitration shall be ..... (city).”
- “The arbitral procedure shall be conducted in the ..... language.”
- “The arbitral tribunal shall decide as amiable compositeur.”\*
- “Consolidation of the arbitral proceedings with other arbitral proceedings pending in the Netherlands, as provided in Article 1046 of the Dutch Code of Civil Procedure, is excluded.”

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\* See Introduction, §§3.5(e) and 13.

## NAI ARBITRATION CLAUSE - DUTCH TEXT

### **Aanbevolen tekst arbitraal beding:**

“Alle geschillen, welke mochten ontstaan naar aanleiding van de onderhavige overeenkomst dan wel van nadere overeenkomsten, die daarvan het gevolg mochten zijn, zullen worden beslecht overeenkomstig het Arbitrage Reglement van het Nederlands Arbitrage Instituut.”

### **Hierbij kunnen desgewenst een aantal zaken geregeld worden (zie Inleiding, §3.5):**

- “Het scheidsgerecht zal bestaan uit een arbiter/drie arbiters.”
- “De plaats van arbitrage zal zijn gelegen in ..... (stad).”
- “De procedure zal worden gevoerd in de ..... taal.”
- “Het scheidsgerecht beslist naar de regelen des rechts.”\*
- “Samenvoeging van het arbitraal geding met een ander arbitraal geding zoals voorzien in artikel 1046 van het Wetboek van Burgerlijke Rechtsvordering, is uitgesloten.”

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\* Zie Inleiding, §§3.5(e) en 13.

## NAI ARBITRATION CLAUSE - FRENCH TEXT

### **Clause compromissoire recommandée:**

“Tous différends découlant du présent contrat ou des contrats qui en résultent, seront tranchés définitivement suivant le Règlement d’Arbitrage de l’Institut néerlandais d’arbitrage (Nederlands Arbitrage Instituut).”

### **D’autres matières peuvent être réglées dans cette clause (voir l’Introduction, §3.5):**

- “Le tribunal arbitral sera composé d’un seul arbitre/de trois arbitres.”
- “Le lieu d’arbitrage sera ..... (ville).”
- “La procédure arbitrale sera conduite dans la langue ..... “
- “Le tribunal arbitral décidera comme amiable compositeur.”\*
- “La jonction de la procédure arbitrale avec une autre procédure arbitrale aux Pays Bas, comme prévue à l’art. 1046 du Code néerlandais de procédure civile, sera exclue.”

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\* Voir Introduction, §§3.5(e) et 13.

## NAI ARBITRATION CLAUSE - GERMAN TEXT

### **Empfohlener Text einer Schiedsklausel:**

“Alle aus dem gegenärtigen Vertrag oder aus näheren Vereinbarungen welche daraus folgen sich ergebende Streitigkeiten werden entgültig entschieden nach der Schiedsgerichtsordnung des Niederländischen Instituts für Schiedsgerichtswesen (Nederlands Arbitrage Instituut).”

### **Zusätzlich könnte noch bestimmt werden (siehe Einführung, §3.5):**

- “Die Anzahl der Schiedsrichter ist ..... (ein oder drei).”
- “Der Ort des Schiedsverfahrens ist ..... (Stadt).”
- “Das Schiedsverfahren wird geführt in die ..... Sprache.”
- “Das Schiedsgericht wird als Amiable Compositeur urteilen.”\*
- “Verbindung des Schiedsverfahrens mit einem anderen in den Niederlanden anhängigen Schiedsverfahren gemäss Art. 1046 der niederländischen Zivilprozessgesetzes, ist ausgeschlossen.”

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\* Sehe Einführung, §§3.5(e) und 13.

# **INTRODUCTION TO NAI ARBITRATION RULES**

## **In force as of 1 January 2010**

### **1. Establishment and Purpose NAI**

1.1 The Netherlands Arbitration Institute (N.A.I.), established in 1949, is a non-profit organisation in the form of a foundation (stichting) under Dutch law. Its Governing Board includes representatives from the business community, the legal profession and accountancy. It furthermore comprises judges of several Dutch courts, while the scientific community is represented as well.

1.2 The purpose of the Institute is to encourage the use of arbitration, binding advice (bindend advies) and other legally regulated means for the prevention, limitation and resolution of disputes. Since its establishment, the NAI has pursued this goal by providing trade and industry with a well-organised arbitral process. Its Arbitration Rules form the basis for this. The NAI also encourages the use of mediation as a form of alternative dispute resolution. For this purpose, it has separate NAI Mediation Rules in place, which replace the 2001 MINITRAGE Rules for mediations requested on or after 1 March 2009. The Secretariat, under the direction of the Administrator, acts as an impartial agency for the administration of both arbitration and mediation. As from 1 September 1995, the Rules presented here are known as the “Arbitration Rules”.

### **2. Arbitration Rules 1986 and the 1992, 1997, 2001 and 2009 amendments**

2.1 On 1 December 1986, a new Arbitration Act entered into force in the Netherlands (Articles 1020 - 1076 of the Dutch Code of Civil Procedure). These Articles will be referred to below as the “Netherlands Arbitration Act”. It constituted a complete overhaul of the arbitration law of 1838.

2.2 The enactment of the new law necessitated a revision of the NAI Arbitration Rules which dated from 1 February 1979. The revised Arbitration Rules became effective in conjunction with the Netherlands Arbitration Act on 1 December 1986.

2.3 Although the contents of the Arbitration Rules did not change greatly, the Arbitration Rules as per 1 December 1986 were more detailed, as provisions from the Netherlands Arbitration Act were largely incorporated in the Arbitration Rules as well. All relevant provisions were thereby combined into one document. For an average arbitration, therefore, it was no longer necessary to consult the Netherlands Arbitration Act in addition to the NAI Arbitration

## INTRODUCTION TO NAI ARBITRATION RULES

Rules. A second reason for opting for a detailed set of Arbitration Rules was the desire to provide parties and arbitrators with clear information on the course and conduct of an NAI arbitration. Allowing the parties and arbitrators to organise a particular arbitration in the manner required by the circumstances of the dispute, however, remained the foremost priority.

2.4 In 1992, Articles 1(d), 1(g), 11, 19(8), 30, 38(1), 40 and 56 were amended or re-adopted (Article 19 was deleted in 2009). These amendments had proved necessary in view of the experience gained in practice in the application of the Arbitration Rules since they became effective on 1 December 1986. Of these amendments and additions the most important ones relate to the definition of international arbitration (Article 1(g)) and the disclosure in the case of doubt as to impartiality and independence (Article 11); these are further explained in the relevant points below. The 1992 amendments took effect on 1 January 1993.

2.5 In 1997, the Governing Board decided to make provision for summary arbitral proceedings. Consequently, a Section Four A was added and the previous Articles 37 and 38 on interim measures and security were extensively revised. Moreover, the inclusion of summary arbitral proceedings entailed the modification of several other provisions of the Arbitration Rules. Independent of this, it was decided to amend Articles 5(3), 29(5), 31(6) and 43(1).

2.6 In 2001 Articles 1(d) and 19(8) were modified (Article 19 was deleted in 2009). Finally, the Arbitration Rules were brought in conformity with the new provision of Article 254 of the Dutch Code of Civil Procedure. The amended Arbitration Rules took effect on 13 November 2001.

2.7 In 2009 Articles 4(1), 6(5) and 42b(3) were modified, and Articles 6(6) (renumbering the existing paragraph 6) and 7(4) were added, establishing that communication via fax or e-mail is possible in the cases mentioned in those Articles. At the same time, where the Rules refer to “send”, “notice” or “notify”, communication or notification by fax or e-mail was included. Article 5(2) was removed in order to do away with the extended periods for international arbitration. In the new Article 17(4), the Administrator is now also authorised to release an arbitrator from his mandate if the arbitrator (i) is no longer capable *de jure* or *de facto* of performing the assignment or (ii) does not perform his assignment according to the Arbitration Rules. The institutional challenge provision in

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Article 19 was removed (because frequently, in practice, the same challenge is subsequently also examined by the Preliminary Relief Judge). The text of Article 38 was changed to clarify that the arbitral tribunal is also authorised to order the provision of security. A new paragraph was added to Article 55 to safeguard the confidentiality and secrecy of NAI arbitration. Textual changes were made to Articles 57(3) and 59(1) to clarify that a conditional counterclaim shall count as a counterclaim as well. Finally, Article 66 was changed.

2.8 The operation of modified and new provisions is governed by Article 67, which entails that they only apply to arbitration commenced after the entry into force of the Arbitration Rules.

2.9 For the relevant literature on the Netherlands Arbitration Act and the NAI Arbitration Rules, reference is made to the NAI website: [www.nai-nl.org](http://www.nai-nl.org).

### **3. Form and contents of an agreement providing for NAI Arbitration**

3.1 For every arbitration, an agreement to arbitrate is required. The Netherlands Arbitration Act uses the general term “arbitration agreement”. This may be a clause in a contract referring future disputes to arbitration (the arbitration clause). An arbitration agreement can also take the form of a compromis (submission agreement) for existing disputes. Insofar as form and contents are concerned, the Netherlands Arbitration Act, for all practical purposes, does not distinguish between arbitration clauses and submission agreements.

3.2 The Netherlands Arbitration Act requires proof in writing of the existence of an arbitration agreement. An oral agreement or an established trade usage will, therefore, no longer be sufficient proof of an agreement to arbitrate.

3.3 For arbitration under the NAI Arbitration Rules, the parties must also agree to have these NAI Arbitration Rules apply to the arbitration. They can use the arbitration clause recommended by the NAI. This clause can be found on page 7 of this booklet. The parties are, of course, free to use different wording for their arbitration clause. Practice has shown, however, that the recommended NAI clause is worded so as to avoid problems in the future.

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3.4 Absent an arbitration clause, the parties may submit disputes already existing between them to NAI arbitration by concluding a submission agreement. A submission agreement requires a document accepted by the parties in writing, containing: (a) the names of the parties; (b) a brief description of the disputes the parties wish to submit to arbitration (broad wording is recommended); and (c) the provision that said disputes shall be arbitrated according to the Arbitration Rules (of the NAI). The agreement does not need to include the name(s) of the arbitrator(s), since the arbitrator(s) can be appointed by the NAI by means of the list-procedure (Article 14).

3.5 If the parties so desire, they may wish to consider adding one or more of the following clauses in the arbitration agreement:

### (a) Number of Arbitrators

“The arbitral tribunal shall be composed of one arbitrator/three arbitrators.”

It should be kept in mind in this regard that three arbitrators will of course cost more than one. If parties have not agreed on the number of arbitrators, this will be determined by the Administrator (Article 12).

### (b) Method of Appointment

Parties may agree on a method of appointing arbitrators that is different from the list-procedure (Article 13). The list-procedure set out in the Arbitration Rules (Article 14), however, is preferable in most cases, as this method of appointment offers the best guarantees for the impartial appointment of independent and qualified arbitrators.

### (c) Place of Arbitration

“The place of arbitration shall be ..... (city).”

Failing agreement of the parties on a place of arbitration, the arbitral tribunal will determine the place of arbitration (Article 22). For summary arbitral proceedings as referred to in Section Four A, failing an agreement of the parties on the place of arbitration, rather than this being determined by the arbitral tribunal, the

## INTRODUCTION TO NAI ARBITRATION RULES

Arbitration Rules indicate Rotterdam as the place of arbitration (Article 42a(4)).

### (d) Exclusion of Consolidation of Arbitrations

“Consolidation of the arbitral proceedings with other arbitral proceedings pending in the Netherlands, as provided in Article 1046 of the Dutch Code of Civil Procedure, is excluded.”

According to Article 1046 of the Netherlands Arbitration Act, a party may request the Preliminary Relief Judge of the Amsterdam District Court to consolidate an arbitration with another arbitration pending before an arbitral tribunal in the Netherlands if there is connexity of the subject matters of the two arbitrations. The Netherlands Arbitration Act provides the possibility of excluding such consolidation by agreement, which may be done by including the clause referred to above. Absent such exclusion by agreement, any consolidation will take place in accordance with Article 1046; the NAI Arbitration Rules do not contain provisions with regard to consolidation.

### (e) Rules of Law and Amiable Compositeur in International Cases

“The arbitral tribunal shall decide as amiable compositeur.”

Article 45(1) provides that the arbitral tribunal shall decide as amiable compositeur, unless the parties have stipulated by agreement that it should decide in accordance with the rules of law. This provision corresponds with the Dutch practice of authorizing the arbitral tribunal to decide as amiable compositeur. However, this rule is reversed in international arbitration (Article 45(2); for international arbitration, please see point 13 of this Introduction).

### (f) Language

“The procedure shall be conducted in the ..... language.”

Article 40 provides that the arbitration procedure shall be conducted in the language agreed to by the parties. Failing such agreement, the language of the procedure will be determined by the arbitral tribunal. The language issue is particularly important for international arbitrations. It is not advisable to agree on several languages.

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### 4. Commencement of the Arbitration

4.1 A NAI-arbitration commences with the filing of a request for arbitration (five copies) with the NAI Secretariat or by fax or e-mail (Article 6(6)). No specific form is prescribed; a letter will suffice. A party may wish to use the standard form which is available from the Secretariat free of charge and may also be downloaded from the NAI website.

4.2 The information required by Article 6(3)(a)-(k) must be provided in the request. A copy of the arbitration agreement (arbitration clause or submission agreement) must be submitted with the request.

4.3 A request for arbitration may also be filed with the Secretariat by fax or e-mail. In such a case it is enough to quote the text of the arbitration agreement. This manner of proceeding may be necessary to avoid expiry of statutory or contractual time limits for bringing a claim. The required copy of the arbitration agreement must then be filed with the Secretariat as soon as possible after the filing of the request for arbitration (Article 6(5)).

4.4 The Administrator communicates a copy of the request for arbitration to the respondent. The respondent has 14 days to file a short answer to the request (Article 7). In this short answer, the respondent may introduce a counterclaim (whether or not conditional). Although it is recommended that the existence of a counterclaim be known of as early as possible in the procedure (especially in view of the appointment of the arbitrator(s)), the respondent may also introduce the counterclaim later, in the statement of defence (Article 25).

4.5 The request for arbitration and the short answer may be brief. Once the arbitrators are appointed, the parties will have a full opportunity to present their case. The request for arbitration and short answer should not be confused with the statements of claim and defence. These memorials are not submitted until after the arbitrators are appointed (Article 24). The request for arbitration and the short answer are meant primarily to inform the Administrator of the nature and circumstances of the dispute so as to facilitate the designation of the arbitrators.

4.6 It is noted that a request for extension of the time limit of 14 days set for the filing of the short answer will be granted only

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under exceptional circumstances. The policy of the NAI is to appoint the arbitrator or arbitrators as promptly as possible.

4.7 The commencement of summary arbitral proceedings in the cases where no arbitration on the merits has been commenced and the arbitral tribunal has not yet been appointed is provided for in Section Four A. See point 9 of this Introduction for a general explanation of summary arbitral proceedings and their regulation in the Arbitration Rules.

### **5. Plea as to Lack of Arbitration Agreement**

5.1 The Administrator does not examine whether the parties have agreed to arbitration and have declared the NAI Arbitration Rules applicable. The arbitral tribunal decides on any plea by the respondent that (NAI) arbitration was not agreed to (Article 9).

5.2 A respondent wishing to invoke the lack of a valid (NAI) arbitration agreement must do so in a timely manner. At the latest, this plea can be raised in the statement of defence, or, failing such statement, before any written or oral defence. A comparable provision applies for summary arbitral proceedings (Article 42h). If a respondent fails to raise the plea in a timely manner, he is barred from raising it later in the arbitral procedure or before a court, unless the plea is based on the ground that the dispute is not capable of settlement by arbitration. Incidentally, it is recommended that the plea be made in the short answer, so that the Administrator can take this into account when appointing the arbitrators.

5.3 It is generally assumed that if the arbitral tribunal rules that it does not have jurisdiction because of the absence of a valid arbitration agreement, such ruling may have the nature and the effect of an arbitral award.

### **6. Appointment of Arbitrators**

6.1 If parties did not agree on the number of arbitrators (always an odd number), the Administrator will determine whether there will be one or three. In doing so, he takes into account the preferences of the parties (indicated in the request for arbitration and the short answer), the amount of the claim, and the complexity of the dispute. Generally, when the amount in dispute exceeds € 200,000.--, the Administrator will determine that three arbitrators are to be appointed.

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6.2 Under the list-procedure, the Administrator, after receiving the short answer, composes a list of names of possible arbitrators. If one arbitrator is to be appointed, the list will contain at least three names. If three arbitrators are to be appointed, at least nine names will be listed. The list is sent to both parties. Each party has 14 days to examine the list. He may delete the names of persons against whom he has overriding objections, and number the remaining names in the order of his preference. The Administrator compares the lists which have been returned and appoints the arbitrator(s). The Administrator is not required to provide new lists to the parties if an insufficient number of names that are acceptable to both parties is left on the returned lists. The same applies if, even though sufficient names are left on the returned lists, these candidates cannot or will not accept their appointment. In such cases, the Administrator can immediately appoint other arbitrators.

6.3 The names on the aforementioned list are preferably drawn from the General Panel of Arbitrators of the NAI. This Panel presently contains some 300 persons with experience and expertise in a large number of fields. The General Panel of Arbitrators is part of the NAI's know-how and is meant to be an internal tool to assist the Administrator in composing lists for the appointment of arbitrators in accordance with Article 14. It cannot, therefore, be made available to third parties.

6.4 The parties are free to agree on a method of appointing arbitrator(s) which is different from the list-procedure. It is also possible that the parties have already reached agreement among themselves on the arbitrator(s). In both cases, this should be mentioned in the request for arbitration. If, however, as is often the case, there is no agreement on particular arbitrators, the appointment will take place in conformity with the list-procedure set out in Article 14.

6.5 For the appointment of the arbitral tribunal in summary arbitral proceedings to which Section Four A applies, please see point 9.2 of this Introduction.

### **7. Procedure**

7.1 The arbitration proper does not start until after the arbitrator(s) are appointed. If the parties have not provided by agreement for a different procedure, the procedure will be determined by the arbitral tribunal and will usually be as follows. First

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of all, the claimant and the respondent have an opportunity to submit a statement of claim and statement of defence, respectively. This may be followed by a second exchange of memorials (memorial of reply and memorial of rejoinder). Thereafter, a hearing will take place where parties and/or their counsel may elaborate their contentions and present their case. At this hearing - or at a separate hearing - witnesses, if any, may be heard. After the hearing, the arbitral tribunal will deliberate and draft the award. Through the intermediary of the Administrator, each party will receive a copy of the award. The award may be sent by fax or e-mail (with a .pdf copy), but the original will always be sent by post as well.

7.2 The preceding is a brief account of the course of events in an average arbitration. A detailed regulation is laid down in the Fourth Section of the Arbitration Rules (Articles 20 - 42). Parties are free to agree on a different procedure. Aside from such agreement, the arbitral tribunal can also establish a different procedure, depending on the nature and circumstances of the dispute. In so doing, the arbitral tribunal will see to it that the parties are treated with equality and that each party will have the opportunity to defend his rights and present his case (Article 23(1)).

7.3 The Arbitration Rules provide that the arbitral tribunal must ensure that the arbitral procedure takes place with due dispatch. The time an arbitral procedure will take is primarily related to the size and complexity of the case. The length of the procedure also depends on the conduct of the parties and their counsel. In this regard, it is recommended that memorials and documents be presented in a timely and organised manner. The Administrator monitors the progress of the proceedings.

7.4 In accordance with Article 43(1), at the end of the hearing the arbitral tribunal shall inform the parties when the award will be rendered. This provision also applies to decisions on the merits. If the parties have waived the right to an oral hearing for the arbitration on the merits, as provided in Article 26, the arbitral tribunal shall inform the parties after the last memorial has been filed. In view of the fact that the determination of the time when the award will be made is at the discretion of the arbitral tribunal (Article 1048 of the Netherlands Arbitration Act), the arbitral tribunal has the power to extend this period of time, one or more times, as necessary. In all cases, the arbitral tribunal shall, however, decide as soon as possible (Article 43(1)).

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7.5 It should be noted that a copy of all communications and documents should be sent to the Administrator (Article 20(2)). This provides the NAI Secretariat with a complete arbitration "shadow file" and enables the Administrator to monitor progress as referred to in point 7.3 above.

7.6 Article 17(4) gives the Administrator the authority to release an arbitrator from his mandate on his own motion (i.e. not necessarily the mandate of the arbitral tribunal as a whole). Failure to perform the mandate issued to an arbitrator (as referred to in Article 17(4)) also includes the provisions of Article 23(3) with regard to the course of the arbitral proceedings.

### 8. Costs

8.1 The arbitrators' fees are determined on the basis of the time spent, the amount in dispute and the complexity of the case (Article 58(1)). The party bringing the claim or counterclaim (whether or not conditional) must pay a deposit to the NAI to cover the fees and other expenses of the arbitrators (Article 59). As a rule, the award will allocate the payment of these costs to the party against whom the case is decided. The NAI has guidelines in place for determining the hourly arbitrator fee. In principle, these guidelines – which can be found on the NAI website – apply only to national arbitration.

8.2 Upon the commencement of an arbitration, administration costs are due to the NAI. These costs are determined on the basis of the schedule contained in the Appendix to the Arbitration Rules (see enclosure). The administration costs are kept at such level as to enable the NAI - a non-profit organization - to cover its expenses. Administration costs are also payable for a counterclaim or conditional counterclaim.

8.3 An arbitration may also involve other costs (e.g., costs of witnesses, experts, or of a secretary to the arbitral tribunal). Such costs, regulated extensively in the Sixth Section of the Arbitration Rules, however, will not be incurred in every arbitration and depend on the nature and circumstances of the dispute.

8.4 The NAI has a guideline in place for arbitrators for orders to pay the costs of legal assistance in NAI arbitration. It can be found on the NAI website.

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### 9. Provisional measures - summary arbitral proceedings

9.1 Article 1051 of the Netherlands Arbitration Act creates the possibility for summary arbitral proceedings. Paragraph 1 of said Article provides that the parties may agree to authorise the arbitral tribunal or its chairman to render an award in summary proceedings, within the limits imposed by Article 254(1) of the Dutch Code of Civil Procedure.

In the past years, it has appeared that NAI summary arbitral proceedings would be a welcome possibility. By adopting Section Four A and amending Articles 37 and 38, the Board of the NAI has complied with this desire.

9.2 The Arbitration Rules provide two means for summary arbitral proceedings. In the first place, a claim in summary arbitral proceedings can be commenced either before or together with the commencement of an arbitration on the merits. The provisions of Section Four A apply to this procedure. This allows the party who requires an immediate provisional measure a means of eliciting a decision from an arbitral tribunal consisting of a sole arbitrator who is appointed with the greatest possible speed by the Administrator after the receipt of the request for summary arbitral proceedings, bypassing the method of appointment which the parties may have agreed upon regarding the arbitration on the merits (Article 42f(1)).

This procedure is not available when the parties have already commenced an arbitration, the arbitral tribunal has been appointed in accordance with Section Three and the appointment has been notified to the parties by the Administrator in accordance with Article 15(1). In that case, the claim in summary arbitral proceedings should be submitted to the arbitral tribunal constituted for the dispute on the merits in accordance with Article 37. Article 42a(2) refers specifically to the use of the latter procedure. This system of fully complementary procedures fulfils virtually all the requirements arising out of arbitral practice regarding the possibility to request provisional measures as long as no final decision on the merits of the dispute has been made.

According to Section Four A, the admissibility of a claim in summary arbitral proceedings does not depend upon an arbitration on the merits being commenced simultaneously or shortly there-after. Thus, it is possible that the decision in summary arbitral proceedings will bring an end to the dispute, as is often the case in prelimi-

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nary relief proceedings before the Preliminary Relief Judge of the District Court. It is also with this possibility in mind that 421(3) allows the parties jointly to request the arbitral tribunal to decide on the merits.

The award in summary arbitral proceedings

9.3 The Netherlands Arbitration Act specifically provides in Article 1051(3) that a decision rendered in summary arbitral proceedings shall be regarded as an arbitral award to which the provisions of Sections Three to Five of the First Title of Book 4 of the Dutch Code of Civil Procedure apply. Therefore, a decision rendered in summary arbitral proceedings can be enforced after obtaining leave from the Preliminary Relief Judge of the District Court. This provision of the law makes it possible for a decision in summary arbitral proceedings to be enforced outside of the Netherlands in accordance with the provisions of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This is subject to a limitation which also arises from the Netherlands Arbitration Act. The First Title of Book 4 is only applicable if the place of arbitration is situated within the Netherlands (Article 1073(1) Netherlands Arbitration Act). Consequently, the Arbitration Rules limit the power to decide in summary arbitral proceedings to cases under the Arbitration Rules which take place in the Netherlands (Article 42a(4) and Article 37(1)).

If parties have agreed to arbitrate under the NAI Arbitration Rules but have not specifically indicated the place of arbitration in their arbitration agreement, Article 42a(4) provides that the place of arbitration shall be Rotterdam. If neither party is domiciled or has his actual residence in the Netherlands (cf. Article 1073(2) of the Netherlands Arbitration Act) it clearly follows from the above-mentioned Article 1073 (1) of the Netherlands Arbitration Act that the First Title of Book 4 of the Dutch Code of Civil Procedure applies and that the arbitral tribunal has the power to decide in summary arbitral proceedings. If the arbitral tribunal that will decide on the merits has been appointed and the parties have not determined the place of arbitration in their agreement, the arbitral tribunal shall determine the place as soon as possible after receipt of the arbitration file (Article 22(1)). By situating the arbitration in the Netherlands, the arbitral tribunal can establish its power to decide in summary arbitral proceedings. Thus, for this case, it is

## INTRODUCTION TO NAI ARBITRATION RULES

not necessary to have a determination of the place of arbitration in the Arbitration Rules.

The decision in summary arbitral proceedings does not in any way prejudice the arbitral tribunal's final decision on the merits (Article 42m and Article 37(6)).

### Preliminary relief - other measures

9.4 The possibility of summary arbitral proceedings does not exclude the power of the Preliminary Relief Judge of the District Court to decide on provisional measures. Taking account of all the circumstances, the Preliminary Relief Judge of the District Court can, however, declare to have no jurisdiction by referring the case to the agreed summary arbitral proceedings, unless the said agreement is invalid (Article 1051(2) Netherlands Arbitration Act).

An interim measure of protection (e.g., attachment) can only be issued by the court. Such requests to the court are not excluded by summary arbitral proceedings (Article 42o and Article 37(7)).

Summary arbitral proceedings may also be used to request the posting of security, relating to either the claim or the counterclaim (Article 42l (2) and Article 37(1)), or for costs related to the arbitration on the merits. Security for costs, however, can only be requested from the arbitral tribunal on the merits (Article 37(1) and Article 42l(2)).

The arbitral tribunal may order provisional measures outside of summary arbitral proceedings. They are made in the form of an order of the arbitral tribunal, rather than in the form of a decision. This possibility is regulated in Article 38 of the Arbitration Rules. Article 38 may be relied on when parties cannot make use of Article 37 because the place of arbitration is not within the Netherlands or parties have specifically excluded its application. In 2009 it was decided that Article 38(1) provides that the arbitral tribunal is authorised to order the security referred to in Article 37(1).

### Course of proceedings in summary arbitral proceedings

9.5 The procedure for summary arbitral proceedings clearly aims at a rapid decision. According to Article 5(4), the time limits set in Section Four A apply for summary arbitral proceedings as regulated in that Section. The arbitral tribunal may however make use of the means of taking evidence which are specifically provided for the arbitration on the merits (Article 42j) in preparing its decision. This means that summary arbitral proceedings as regulated in

## INTRODUCTION TO NAI ARBITRATION RULES

Section Four A can proceed in the same fashion as in summary proceedings before the Preliminary Relief Judge of the District Court. If at the same time as the commencement of summary arbitral proceedings, an arbitration on the merits between the same parties is commenced, the arbitral tribunal that has been appointed under Article 42f retains jurisdiction until its final decision.

If the claim is unsuited for a decision in summary arbitral proceedings, it may be referred to arbitration on the merits (Article 42k and Article 37(4)).

9.6 Summary arbitral proceedings should be distinguished from expedited arbitration. The latter procedure does lead to a decision on the merits, but in an expedited manner. In urgent cases the parties may request that the arbitral tribunal establish an appropriate procedural order. The parties may also agree upon an expedited term themselves. Whereas the NAI summary arbitral proceedings as provided for in the Arbitration Rules do fulfil to a large and material extent the need for a speedy decision or for instant provisional measures, the Arbitration Rules do not provide for separate rules with regard to expedited arbitration.

### 10. Binding Advice

10.1 An arbitral award may be declared enforceable simply by leave of enforcement (*exequatur*) granted by the Preliminary Relief Judge of the District Court. This gives the arbitral award the same force as a court judgement.

10.2 A decision in a binding advice (*bindend advies*) does not have the force of a court judgement. It is merely a decision of a third party (the binding advisor), compliance with which was agreed to in advance by the parties. A party who fails to comply with a binding advice is in breach of contract. The other party may then summon him to court for specific performance of the agreement.

10.3 Unlike an arbitral award, which is mainly examined for compliance with formal requirements, the court can also review the substance of binding advice within certain limits. A claim for specific performance will be denied and/or the binding advice will be nullified if, in the view of the court, being bound to the binding advice would be unacceptable under the criteria of reasonableness and fairness, such in light of the substance of the advice or the manner in which it came about.

## INTRODUCTION TO NAI ARBITRATION RULES

10.4 Under the arbitration law applicable until 1986, doubt existed as to the arbitrability of certain matters. The sole determination of the quality or condition of goods or the sole determination of the quantum of damages or a monetary debt was problematic in this regard. Under the current Netherlands Arbitration Act, these determinations may be made in arbitration if the parties have so agreed (Article 1020(4)(a) and (b) of the Netherlands Arbitration Act). Moreover, the Netherlands Arbitration Act opens the possibility to authorise an arbitral tribunal to fill gaps in or to modify a contract (Article 1020(4)(c)).

10.5 These legislative innovations will diminish the use of binding advice in most cases, although they do not abolish it. Parties may still agree to binding advice. Whilst the NAI generally prefers arbitration to binding advice, the Arbitration Rules leave open the possibility to agree on binding advice in accordance with the Arbitration Rules.

10.6 There will still be cases for which settlement by arbitration is legally precluded. For such cases, the Arbitration Rules include a provision that, if parties have agreed to arbitration, but the arbitral tribunal finds that the dispute is not capable of settlement by arbitration, the tribunal is authorised to render its decision wholly or partially in the form of a binding advice (Article 3(2)).

### **11. Impartiality and Independence of Arbitrators**

11.1 Article 10 of the Arbitration Rules contains the fundamental principle of the arbitrator's impartiality and independence. It sets out details as to what the requirements of impartiality and independence entail in particular and what kinds of conduct the arbitrator should avoid. If a person invited to be appointed as arbitrator does not meet these requirements he should not accept that invitation. For the challenge procedure, reference is made to Article 1033 of the Netherlands Arbitration Act, as Article 19 of the Arbitration Rules has been deleted as per 1 January 2010.

11.2 Judgements of the Court of Human Rights in Strasbourg and, following in the wake of these, judgements of the Supreme Court of the Netherlands as well, have made clear with respect to the requisite impartiality of judges that in certain circumstances even the appearance of bias may entail that the judge in question should refrain from dealing with a particular case. This case law is of course important also with regard to the scope of the fundamen-

## INTRODUCTION TO NAI ARBITRATION RULES

tal requirements of impartiality and independence imposed on arbitrators and the related duty of disclosure that is incumbent upon any candidate for appointment as an arbitrator as well as upon any arbitrator already appointed. The duty of disclosure is laid down in Article 1034 of the Dutch Code of Civil Procedure. The wording of Article 11 (1992 version) of the Arbitration Rules has been derived from this statutory provision with the intention of making the scope of this provision, as determined by the courts, applicable also to the corresponding provision in the NAI Arbitration Rules.

### **12. Confidentiality and secrecy**

12.1 Article 55 was expanded with a new first paragraph in 2009. Article 55(1) determines that arbitration is confidential and all individuals involved either directly or indirectly are bound to secrecy, unless and in so far as publication ensues by law or the agreement between the parties.

12.2 If an arbitral award is published (Article 55(2)), the NAI will take great care to ensure that the publication is anonymised.

### **13. International arbitration**

13.1 The Netherlands Arbitration Act does not distinguish between domestic and international arbitration. The Arbitration Rules only do so in some respects, where the international element gives rise to do so. They are sufficiently flexible to suit both types of arbitration. Summary arbitral proceedings can also be used in international arbitration provided the place of arbitration is in the Netherlands, as described above in point 9.3.

13.2 Provisions in the Arbitration Rules that are especially tailored to the specific circumstances of international arbitration are: nationality of arbitrators (Article 16); language (Article 40); decision according to the rules of law as opposed to amiable compositeur (Article 45(2)); applicable law (Article 46); and dissenting opinion (Article 48(4)). With the exception of Article 16, these Arbitration Rules also apply to summary arbitral proceedings as regulated in Section Four A. For most of these provisions, the Arbitration Rules use a definition of international arbitration which, since the 1998 amendment, has read as follows: “an arbitration in which at the moment of commencement of arbitration, as referred to in Article 6 and 42b of these Rules, at least one of the parties is domiciled or has his seat, or, in the absence thereof, has

## INTRODUCTION TO NAI ARBITRATION RULES

his actual residence outside the Netherlands” (Article 1(g)). By making the domicile, the seat or, failing this, the actual residence at the time the arbitration was commenced determinant, changes in this respect while the arbitration is pending will not cause any difficulties in the application of the provisions referred to above.

13.3 The Arbitration Rules are meant primarily for arbitrations, both domestic and international, taking place in the Netherlands. The Rules may, however, govern arbitrations that are held outside the Netherlands, if the parties agree or the arbitral tribunal determines accordingly (see Article 22(1)). In such cases the Netherlands Arbitration Act will not apply (see Article 1073(1) of the Netherlands Arbitration Act).

13.4 For arbitration with foreign parties, the English translation of the Arbitration Rules is available from the Secretariat and on the NAI website. In contracts with foreign parties, reference can be made to NAI arbitration by including the arbitration clause in English as recommended by the NAI, found on page 7 of this booklet.

### 14. UNCITRAL Arbitration Rules

The NAI is prepared to act as Appointing Authority under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), if the parties have so agreed. For such a case, the arbitration clause recommended by UNCITRAL could read as follows :

“Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.

- a. The appointing authority shall be the Netherlands Arbitration Institute, Rotterdam;
- b. The number of arbitrators shall be ..... (one or three);
- c. The place of arbitration shall be ..... (town or country);
- d. The language(s) to be used in the arbitral proceeding shall be ..... “

## INTRODUCTION TO NAI ARBITRATION RULES

If such an arbitration agreement is made, the NAI Arbitration Rules will not apply, and the appointment of arbitrators by the NAI will be according to the UNCITRAL Rules. Also for technical assistance (conference rooms, secretarial assistance, etc.) in this type of international arbitrations the NAI may be called upon if needed.

The administration costs due for the NAI's activities as Appointing Authority are given in the Appendix to these Rules (see enclosure).

### **15. Exclusion of liability**

Article 66 provides for the exclusion of liability.

The Secretariat of the NAI will be pleased to provide additional information regarding NAI arbitration (P.O. Box 21075, 3001 AB Rotterdam, the Netherlands, Aert van Nesstraat 25 J/K, Rotterdam, telephone +31 - 10 - 281 69 69, Fax +31 - 10 - 281 69 68, e-mail: [secretariaat@nai-nl.org](mailto:secretariaat@nai-nl.org), website: [www.nai-nl.org](http://www.nai-nl.org))

Rotterdam, December 2009

**NAI ARBITRATION RULES**  
**in force as of 1 January 2010**

**SECTION ONE - GENERAL PROVISIONS**

**Article 1 - Definitions**

In these Rules, the words and phrases listed below have the following meaning:

- (a) “NAI”: Netherlands Arbitration Institute, Foundation (Stichting), with its seat in Rotterdam;
- (b) “Governing Board”: the Governing Board of the NAI;
- (c) “Executive Board”: the executive section of the NAI Governing Board as provided for in the NAI Articles of Association;
- (d) “Administrator”: the Director of the NAI as provided for in the NAI Articles of Association and in case a director is lacking the member of the Executive Board appointed as such by the Governing Board, or their deputy nominated by the Executive Board;
- (e) “arbitration agreement”: the agreement by which parties bind themselves to submit to arbitration an existing dispute between them (compromis; submission agreement) or disputes which may arise between them in the future (arbitration clause) out of a defined legal relationship, whether contractual or not; this agreement shall be proven by an instrument in writing; for this purpose an instrument in writing which provides for arbitration or refers to standard conditions providing for arbitration is sufficient, provided that this instrument is expressly or impliedly accepted by or on behalf of the parties;
- (f) “arbitral tribunal”: an arbitral tribunal of one or more arbitrators, composed in accordance with Section Three or Section Four A (summary arbitral proceedings) of these Rules;
- (g) “international arbitration”: an arbitration in which at the moment of commencement of arbitration as referred to in Articles 6 and 42b of these Arbitration Rules, at least one of the parties is domiciled or has its seat, or, in the absence thereof, has his actual residence outside the Netherlands.

## **NAI ARBITRATION RULES**

### **Article 2 - Field of Application (Arbitration)**

These Rules shall apply if parties have agreed to arbitration by the NAI or to arbitration in accordance with the NAI Rules.

### **Article 3 - Field of Application (Binding Advice)**

1. These Rules shall apply accordingly if parties have agreed in writing to binding advice by the NAI or to binding advice in accordance with the NAI Rules.

2. If parties have agreed to arbitration, but the arbitral tribunal finds that a dispute is wholly or partially incapable of settlement by arbitration, the arbitral tribunal is authorised to render its decision wholly or partially in the form of a binding advice.

3. In case of binding advice, no deposit of the decision with the registry of the District Court takes place. The period of time for correction (Article 52) and for rendering an additional decision (Article 53) shall expire 30 days after the day the decision is received.

### **Article 4 - Notices**

1. Notices shall be given or confirmed in writing, such as by letter, fax or e-mail.

2. If there is more than one claimant or respondent, the number of copies of notices and other written submissions to be submitted shall be increased accordingly.

### **Article 5 - Periods of Time**

1. For the purposes of these Rules, a period of time shall start to run on the day a notice is received unless these Rules or the arbitral tribunal explicitly provide otherwise.

2. [Deleted]

3. The Administrator is, at the request of a party or on his own motion, authorised to extend or to shorten in exceptional cases the periods of time referred to in Articles 7(4), 12(3), 14(3), 14(9), 57(5) and 59(6).

## NAI ARBITRATION RULES

4. For summary arbitral proceedings as regulated in Section Four A, the periods of time which are determined in those provisions or in accordance with those provisions, apply.

### SECTION TWO - COMMENCEMENT OF ARBITRATION

#### **Article 6 - Request for Arbitration**

1. An arbitration commences by the filing of a request for arbitration with the NAI Secretariat.

2. Both in case of an arbitration clause and in case of a submission agreement, the arbitration shall be deemed to have commenced on the day the request for arbitration is received by the NAI Secretariat.

3. The request for arbitration shall contain the following particulars:

(a) the name and address of the claimant, his place of domicile, seat or actual residence, as well as his telephone and fax number and e-mail address;

(b) the name and address of the respondent, his place of domicile, seat or actual residence, as well as his telephone and fax number and e-mail address;

(c) a brief description of the dispute;

(d) a clear description of what is claimed;

(e) a reference to the arbitration agreement; a copy of the latter shall be submitted simultaneously;

(f) the name(s) and address(es) of the arbitrator(s), their place of domicile or actual residence, as well as their telephone and fax number and e-mail address, insofar as parties themselves have appointed the arbitrator(s);

(g) the method of appointing the arbitrator(s), if parties have agreed to a method of appointment different from the list-procedure provided in Article 14;

(h) the number of the arbitrators, if agreed by the parties;

## NAI ARBITRATION RULES

- (i) the place of arbitration, if agreed by the parties;
- (j) the preference, if any, of the claimant for the number of the arbitrators and/or for the place of arbitration, if not agreed by the parties;
- (k) to the extent applicable, further particulars as to the arbitral procedure, e.g., the nationality of arbitrators as referred to in Article 16(4).

4. The request for arbitration shall be filed in five copies. If the request for arbitration is not filed in a sufficient number of copies, or does not comply with all requirements listed in the preceding paragraph, the Administrator shall contact the claimant in order to obtain additional copies or completion as necessary. The Administrator is authorised to suspend action on the request for arbitration until the requirements mentioned above have been complied with. The suspension does not prejudice the provisions of paragraph (2).

5. As regards the requirements of paragraph (3)(e), in case a request for arbitration is contained in a fax or e-mail, it is sufficient for the claimant to quote literally the text of the arbitration agreement provided that, as soon as possible after the commencement of the arbitration, the claimant communicates a copy of the arbitration agreement to the Administrator.

6. Arbitration can also be commenced by submitting a request for arbitration by fax or e-mail. If deemed warranted by the Secretariat, the party submitting a request by fax or e-mail can be requested to submit the request to the Secretariat as yet in five copies, with notification that action on the application will not be continued until these have been received.

7. The Administrator shall communicate to the claimant a written acknowledgement of receipt of the request for arbitration, making mention of the date of receipt.

### **Article 7 - Short Answer**

1. The Administrator shall communicate a copy of the request for arbitration to the respondent, along with mention of the date of receipt, and shall invite him in writing to submit a short answer thereto.

## NAI ARBITRATION RULES

2. The short answer shall also contain the preference, if any, of the respondent for the number of the arbitrators and/or for the place of arbitration, if not agreed by the parties, as well as, to the extent applicable, any further particulars as to the arbitral procedure.
3. In the short answer the respondent may introduce a counterclaim against the claimant in accordance with the provisions of Article 25(2). The requirements mentioned in Article 6(3)(c),(d) and (e) apply accordingly to the counterclaim.
4. The provisions of Article 6(6) shall apply correspondingly.
5. The respondent shall file the short answer with the Administrator in five copies within 14 days after receipt of the invitation mentioned above.
6. The Administrator shall communicate a copy of the short answer to the claimant.

### **Article 8 - Purpose of Request for Arbitration and Short Answer**

The request for arbitration and the short answer serve as an introduction to the arbitral procedure. They do not prejudice the right of the parties to submit a statement of claim and a statement of defence, respectively, in accordance with the provisions of Article 24. To the extent that the Administrator is involved in the determination of the number and/or the appointment of the arbitrator(s), he shall draw the required information from the request for arbitration and the short answer.

### **Article 9 - Plea as to Lack of Arbitration Agreement**

1. A party who participated in the appointment of the arbitrator(s) in the manner provided in the Third Section shall not be barred from raising the plea that the arbitral tribunal lacks jurisdiction on the ground that there is no valid arbitration agreement.
2. A respondent who appears in the arbitral proceedings and wishes to raise the plea that the arbitral tribunal lacks jurisdiction on the ground that there is no valid arbitration agreement shall raise this plea before submitting any defence.

## NAI ARBITRATION RULES

Accordingly, this plea shall be raised ultimately in the statement of defence or, in the absence thereof, prior to the first written or oral defence. For the purpose of this paragraph, the short answer referred to in Article 7 shall not be deemed to constitute a defence.

3. If a respondent fails to raise this plea before submitting any defence, as provided in the previous paragraph, he shall be barred from doing so thereafter in the arbitral proceedings or in proceedings before a court unless the plea is made on the ground that the dispute is not capable of settlement by arbitration.

4. A plea that the arbitral tribunal lacks jurisdiction shall be decided by the arbitral tribunal.

5. An arbitration agreement shall be considered and decided upon as a separate agreement. The arbitral tribunal shall have the power to decide on the validity of the contract of which the arbitration agreement forms part or to which the arbitration agreement is related.

6. A plea that the arbitral tribunal lacks jurisdiction shall not preclude the NAI from administering the arbitration.

### SECTION THREE - APPOINTMENT OF ARBITRATORS

#### **Article 10 - Impartiality and Independence of Arbitrators**

1. The arbitrator shall be impartial and independent. He may not have a close personal or professional relationship with a co-arbitrator or with any of the parties. He may not have any direct personal or professional interest in the outcome of the case. He may not, prior to his appointment, disclose his opinion on the case to one of the parties.

2. In the course of the proceedings an arbitrator shall not have any contacts with a party concerning matters regarding the proceedings unless he has obtained prior consent of the other parties and, if the tribunal consists of more than one arbitrator, of the co-arbitrators.

## **NAI ARBITRATION RULES**

### **Article 11 - Disclosure in Case of Doubt as to Impartiality and Independence**

1. If a person invited to be appointed as arbitrator believes that he might be challenged, he shall so notify the person by whom he has been invited, such notice to be in writing and to state the probable grounds for such challenge.
2. If the person referred to in paragraph (1) has already been appointed as arbitrator, he shall also send the Administrator the notice as referred to in that paragraph, if the invitation relating to his appointment was not made by the Administrator. The Administrator shall send copies of the notice to the parties and, if the arbitral tribunal is composed of more than one arbitrator, to the other arbitrators.
3. If pending the arbitration proceedings an arbitrator believes that he might be challenged, he shall so notify in writing the probable grounds for such challenge, and the Administrator shall send copies of the notice to the parties and, if the arbitral tribunal is composed of more than one arbitrator, to the other arbitrators.

### **Article 12 - Number of Arbitrators**

1. If the parties have not agreed on the number of arbitrators, the number shall be determined by the Administrator after the filing of the short answer or, in the absence thereof, after expiration of the period of time for filing the short answer.
2. The Administrator shall determine that the number of arbitrators be one or three, taking into account the preference of the parties, the amount of the claim and of the counterclaim, if any, and the complexity of the case.
3. If the parties agreed on an even number of arbitrators, the latter shall appoint an additional arbitrator who shall act as the chairman of the arbitral tribunal. If, within two weeks after acceptance of their mandate, the arbitrators fail to agree on the additional arbitrator, the latter shall, at the request of either party, be appointed in accordance with the list-procedure provided in Article 14.

## **NAI ARBITRATION RULES**

### **Article 13 - Method of Appointment as Agreed by the Parties**

1. If the parties agreed on a method of appointing the arbitrator(s) other than the list-procedure provided in Article 14, the appointment shall take place as agreed by the parties, subject to the provisions of the following paragraphs.
2. If such method of appointment is not complied with wholly or in part within the period of time agreed to by the parties, or, in the absence of such period of time, within four weeks after commencement of the arbitration, the appointment of the arbitrator(s) shall take place in accordance with the list-procedure provided in Article 14.
3. If one or more of the arbitrators who were appointed by the parties themselves do not, in the opinion of the Administrator, offer sufficient safeguards for a sound arbitration, the Administrator may refuse to administer the arbitration, unless the parties agree to the replacement of such arbitrator in accordance with the list-procedure provided in Article 14.

### **Article 14 - List-Procedure**

1. As soon as possible after receipt of the short answer referred to in Article 7 or, in the absence thereof, after expiration of the period of time for filing of the short answer, the Administrator shall communicate to each of the parties an identical list of names. If one arbitrator is to be appointed, the list shall contain not less than three names; if three arbitrators are to be appointed, the list shall contain not less than nine names.
2. Each party may delete from this list the names of persons against whom he has overriding objections, and number the remaining names in the order of his preference.
3. If a list is not returned to the Administrator within fourteen days after its dispatch to a party, it will be assumed that all persons appearing on it are equally acceptable to that party for appointment as arbitrator.
4. As soon as possible after receipt of the lists, or failing this, after expiration of the period of time referred to in the previous paragraph, the Administrator shall, taking into account the prefer-

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ences and/or objections expressed by the parties, invite one or three persons from the list, as the case may be, to act as arbitrator.

5. If and to the extent that the lists which have been returned show an insufficient number of persons who are acceptable as arbitrator to each of the parties, the Administrator shall be authorised to invite directly one or more other persons to act as arbitrator. The same shall apply if a person is not able or does not wish to accept the Administrator's invitation to act as arbitrator, or if there appear to be other reasons precluding him from acting as arbitrator, and there remain on the lists an insufficient number of persons who are acceptable as arbitrator to each of the parties.

6. If the arbitral tribunal is composed of three arbitrators, the arbitrators shall choose a chairman from amongst themselves, if necessary, in accordance with the provisions of Article 16(3).

7. If the parties agreed only to the appointment of arbitrator(s) by the NAI, without referring to arbitration by the NAI or arbitration in accordance with the NAI Rules, such appointment shall take place in accordance with the provisions of this Article unless the parties agreed to another method of appointment by the NAI.

8. For the application of the provisions of this Article, the Administrator preferably shall draw the names of persons from the General Panel of Arbitrators which is established, expanded and amended by the NAI.

9. The appointment of the arbitrator(s) in accordance with the provisions of this Article shall take place within two months after commencement of the arbitration.

### **Article 15 - Letter of Appointment; Acceptance of Mandate; Notice of Appointment to Parties**

1. The appointment of the arbitrator(s) in accordance with the provisions of Article 13 or 14 shall be confirmed by the Administrator by a letter of appointment addressed to the arbitrator(s).

2. An arbitrator shall accept his mandate in writing. The signing and returning to the Administrator of a copy of the letter of appointment will suffice for this purpose.

## **NAI ARBITRATION RULES**

3. Simultaneously with the dispatch of the letter of appointment, the Administrator shall notify the parties in writing of the appointment.

### **Article 16 - Nationality of Arbitrator**

1. No person shall be precluded from appointment as arbitrator by reason of his nationality, except as provided in the following paragraphs.

2. In an arbitration between parties of different nationality, if an arbitral tribunal composed of one arbitrator is to be appointed in accordance with the list-procedure provided in Article 14, each of the parties may require that this arbitrator be of a nationality other than that of any of the parties.

3. In an arbitration between parties of different nationality, if an arbitral tribunal composed of three arbitrators is to be appointed in accordance with the list-procedure provided in Article 14, each of the parties may require that the arbitrator who will act as the chairman of the arbitral tribunal be of a nationality other than that of any of the parties.

4. Such request shall be communicated to the Administrator, by the claimant in the request for arbitration referred to in Article 6, and by the respondent in the short answer referred to in Article 7.

### **Article 17 - Release from Mandate**

1. An arbitrator who has accepted his mandate may, at his own request, be released therefrom either with the consent of the parties or by the Administrator.

2. An arbitrator who has accepted his mandate may be released therefrom by the parties jointly, without a request thereto from the arbitrator himself being necessary. The parties shall promptly notify the Administrator of such release.

3. An arbitrator who has accepted his mandate and who has become de jure or de facto unable to perform his mandate may, at the written request of a party, be released from his mandate by the Administrator.

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4. The Administrator may on his own motion release an arbitrator from his mandate if he (i) has become unable to perform his mandate de facto or de jure, or (ii) fails to perform his mandate in accordance with these Rules.

5. In the cases referred to in paragraphs (1), (3) and (4), the Administrator shall not release an arbitrator from his mandate until the parties have been given the opportunity to express their views in writing to the Administrator.

### **Article 18 - Replacement of Arbitrator**

1. An arbitrator who, for whatever reason, is released from his mandate shall be replaced by a new arbitrator. The new arbitrator shall be appointed in accordance with the list-procedure provided in Article 14 unless the parties have agreed to another method of replacement. The same applies in case of death of an arbitrator.

2. Until replacement has taken place, the arbitral proceedings shall be suspended by operation of law. After replacement, the arbitral proceedings shall continue from the stage they had reached unless the arbitral tribunal deems a reconsideration of the matter, wholly or in part, justified.

### **Article 19 - [Deleted]**

## **SECTION FOUR - PROCEDURE**

### **Article 20 - Arbitration File and Communications**

1. Simultaneously with the communication of the letter of appointment referred to in Article 15, the Administrator shall transmit the arbitration file to the arbitral tribunal.

2. After transmission of the arbitration file to the arbitral tribunal, the parties shall send their communications and other written submissions directly to the arbitral tribunal. A copy of every communication or written submission shall be sent simultaneously to the Administrator. The same applies to communications from the arbitral tribunal to the parties.

## **NAI ARBITRATION RULES**

### **Article 21 - Representation of and Assistance for Parties**

1. The parties may appear before the arbitral tribunal in person, be represented by a practising lawyer or be represented by any other person expressly authorised in writing for this purpose. The parties may be assisted in the arbitral proceedings by any persons they may choose.

2. If a party is to be represented at a hearing by a practising lawyer or by an authorised representative, he shall so notify in writing the arbitral tribunal and the other party as soon as possible after the date of the hearing is determined. If the request for arbitration referred to in Article 6, or the short answer referred to in Article 7, was filed by a practising lawyer or by an authorised representative, said notification shall be deemed to have taken place.

### **Article 22 - Place of Arbitration**

1. If the place of arbitration is not agreed to by the parties, the place shall be determined by the arbitral tribunal as soon as possible after receipt of the arbitration file. The arbitral tribunal shall notify the parties and the Administrator in writing of the place so determined.

2. The arbitral tribunal may hold hearings, deliberate, and examine witnesses and experts at any other place, within or outside the Netherlands, which it deems appropriate.

### **Article 23 - Procedure in General**

1. The arbitral tribunal shall ensure the equal treatment of the parties. It shall give each party an opportunity to substantiate his claims and to present his case.

2. The arbitral tribunal shall determine the manner in which, and the periods of time within which, the procedure shall be conducted, taking into account the provisions of these Rules, arrangements, if any, between the parties, and the circumstances of the arbitration.

3. The arbitral tribunal shall ensure that the arbitral procedure takes place with due dispatch. It may, at the request of a party or on its own motion, extend in exceptional cases a period of time fixed by it or agreed to by the parties.

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4. At the request of a party, or on its own motion, the arbitral tribunal may, after receipt of the arbitration file or at a later stage of the proceedings, hold a meeting with the parties to discuss the course of the proceedings and/or to specify further the factual and legal issues in dispute.

### **Article 24 - Exchange of Memorials**

1. Unless the parties have agreed otherwise, the claimant and the respondent shall be given the opportunity by the arbitral tribunal to submit a statement of claim and a statement of defence, respectively.

2. Unless the parties have agreed otherwise, it is at the discretion of the arbitral tribunal whether a memorial of reply and a memorial of rejoinder shall be submitted. The same applies to any further written submissions of the parties.

3. The provisions of this Article shall apply to a counterclaim accordingly.

### **Article 25 - Counterclaim**

1. A counterclaim that is not raised, at the latest, in the statement of defence or, in the absence thereof, that is not brought forward in the first written or oral defence, cannot be raised at a later stage in the same arbitral proceedings, except in exceptional circumstances as determined by the arbitral tribunal.

2. A counterclaim is admissible if it falls under the same arbitration agreement as that on which the request for arbitration is based, or if the same arbitration agreement is expressly or tacitly made to apply to it by the parties.

### **Article 26 - Hearing**

1. The arbitral tribunal shall give the parties an opportunity to elaborate on their contentions orally at a hearing unless the parties agree to forego such opportunity.

2. The arbitral tribunal shall determine the day, time and place of the hearing and shall give the parties adequate advance notice thereof. The same shall apply to any further hearing that the arbitral tribunal may, at its discretion, deem necessary.

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3. The arbitral tribunal may allow other persons than those mentioned in Articles 21, 29, 30 and 31, to attend the hearing unless a party raises objections thereto.

### **Article 27 - Evidence in General**

Unless the parties have agreed otherwise, the arbitral tribunal shall be free to determine the admissibility, relevance, materiality and weight of evidence as well as the allocation of the burden of proof.

### **Article 28 - Production of Documents**

1. Except as otherwise agreed by the parties, the memorials mentioned in Article 24 shall be accompanied by, to as large an extent as possible, the documentary evidence relied on by the parties.

2. The arbitral tribunal shall have the power to order the production of specific documents which it deems relevant to the dispute.

### **Article 29 - Witnesses**

1. The arbitral tribunal shall determine the day, time and place of the examination of witnesses, as well as the manner in which the examination shall proceed unless the parties agreed to a manner of examination. The parties shall be notified in writing in a timely manner of this day, time and place.

2. A party who wishes to have a witness examined shall notify the arbitral tribunal and the other party in a timely manner of the witness' name and the subject matters of the witness' testimony.

3. The arbitral tribunal shall decide whether a witness shall be examined under oath or on affirmation.

4. The arbitral tribunal shall decide whether, and in what form, the examination shall be recorded.

5. If the arbitral tribunal is composed of more than one arbitrator, it shall be authorised to designate one of its members to examine witnesses. In such case a written report of the examination of the witnesses shall be made.

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### **Article 30 - Experts (Party-Appointed)**

A party shall be free to submit the opinion of an expert consulted by him. If the party submitting the expert opinion or the other party so requires, or if the arbitral tribunal so determines, the party submitting the opinion shall call the expert to appear at a hearing to further explain his opinion, unless the arbitral tribunal shall determine a different method of calling such expert witness.

### **Article 31 - Experts (Tribunal-Appointed)**

1. The arbitral tribunal may appoint one or more experts to give advice. The arbitral tribunal may consult the parties as to the terms of reference for the expert.
2. The arbitral tribunal shall promptly communicate to the parties a copy of the appointment and the terms of reference of the expert.
3. If a party fails to provide an expert with the information required by him or fails to give him the necessary cooperation, the expert may request the arbitral tribunal to order that party to do so.
4. Promptly upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of this report to the parties.
5. The parties shall be given an opportunity to comment in writing on the expert's report within a period of time set by the arbitral tribunal.
6. A party may request the arbitral tribunal to examine the expert at a hearing. If a party wishes to make such request, he shall so inform the arbitral tribunal and the other party promptly upon receipt of the expert's report. The arbitral tribunal shall give each party, if so requested, an opportunity of presenting his own experts at the same hearing. Article 29(5) shall apply accordingly.
7. The arbitral tribunal shall not be obligated to follow the expert's advice if it is not in conformity with its own convictions.

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### **Article 32 - Site Inspection**

If the arbitral tribunal deems it appropriate, it may order a site inspection. The parties shall be given the opportunity to be present at the inspection.

### **Article 33 - Order for Appearance in Person of Parties**

At any stage of the proceedings the arbitral tribunal may order the parties to appear in person for the purpose of providing information or attempting to arrive at a settlement.

### **Article 34 - Amendment of Claim**

1. A party may amend or increase a claim or counterclaim, as the case may be, at the latest at the beginning of the final hearing or, in the absence of a hearing, at the latest in the final memorial admitted by the arbitral tribunal. Thereafter, such shall no longer be allowed except in exceptional circumstances as determined by the arbitral tribunal. A party may at all times decrease his claim or counterclaim, as the case may be.

2. The other party may object to an amendment or increase if this unreasonably hinders his defence, or if this causes unreasonable delay of the proceedings. The arbitral tribunal shall hear the parties and promptly decide on the objections raised by the other party.

3. In case of default of a party as provided in Article 36, the arbitral tribunal shall give in writing the defaulting party an opportunity to comment on the amendment or increase.

### **Article 35 - Withdrawal of Request for Arbitration**

1. The claimant may withdraw his request for arbitration so long as the respondent has not submitted a statement of defence as referred to in Article 24 or, in case the arbitration does not take place on the basis of written submissions, so long as a hearing has not been held.

2. Thereafter, withdrawal of the request for arbitration shall be possible only with the express consent of the respondent, without prejudice to the provisions of Articles 57(5) and 59(6).

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3. The withdrawal shall be confirmed in writing to the parties by the Administrator and, after its appointment, by the arbitral tribunal through the intermediary of the Administrator.

### **Article 36 - Default**

1. If the respondent, without showing good cause, fails to submit within the period of time set by the arbitral tribunal a statement of defence as referred to in Article 24, the arbitral tribunal may render an award forthwith.

2. This award shall be rendered in favour of the claimant unless the arbitral tribunal considers the claim to be unlawful or unfounded. Before rendering the award, the arbitral tribunal may require the claimant to produce evidence in support of one or more of his contentions.

3. Paragraphs (1) and (2) shall apply accordingly if a hearing takes place, whether or not preceded by an exchange of memorials, and the respondent, although duly notified, fails to appear without showing good cause.

4. If the claimant, without showing good cause, fails to submit, within the period of time set by the arbitral tribunal, a statement of claim as referred to in Article 24, the arbitral tribunal may terminate the arbitral proceedings by means of an award. The same shall apply if the claimant, after submitting the statement of claim, fails to comply with an order of the arbitral tribunal to duly explain his claim within the period of time set by the arbitral tribunal.

5. The provisions of this Article shall apply accordingly to a counterclaim.

### **Article 37 - Summary Arbitral Proceedings after the Appointment of the Arbitral Tribunal on the Merits**

1. If the place of arbitration is situated within the Netherlands, the arbitral tribunal is authorised, at the request of a party, in case where, considering the interests of the parties, an immediate provisional measure is urgently required, to make an award in summary arbitral proceedings at any stage of the proceedings. This includes the authority to order the provision of security on behalf of the party who requests it, in a form to be determined by the arbitral tri-

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bunal, regarding any claim or counterclaim, as well as regarding costs related to the arbitration on the merits.

2. The request shall be submitted to the arbitral tribunal in a separate memorial; simultaneously, a copy of the memorial shall be sent to the other party and to the Administrator. The memorial shall contain a clear description of the requested provisional measure, the reasons for the claim and for the purported urgency. The evidence on which the claim is based shall be submitted together with the memorial, in so far as they have not yet already been submitted in the proceedings.

3. The arbitral tribunal shall determine immediately the day, time and place of the hearing for the claim referred to in the second paragraph and shall promptly notify the parties in writing thereof. Further submission of written memorials shall only take place if the arbitral tribunal so determines.

4. If the arbitral tribunal determines that the case is not sufficiently urgent or is too complicated to be decided by a provisional decision, it may reject the claim either wholly or partially and determine that it shall be decided in the arbitration on the merits.

5. A decision as referred to in the first paragraph shall be regarded as an arbitral award in the sense of Article 1051(3) of the Dutch Code of Civil Procedure. The provisions of Section Five of these Rules also apply.

6. The provisional decision shall in no way prejudice the final judgement of the arbitral tribunal with regard to the merits of the case.

7. The submission of a claim based on this Article does not preclude a party from requesting a court to grant interim measures of protection.

### **Article 38 - Provisional Measures other than in Summary Arbitral Proceedings**

1. Without prejudice to the power provided in Article 37, the arbitral tribunal, at the request of a party, at any point in the proceedings, may provisionally make any decision or take any measure regarding the object of the dispute which it deems useful or necessary. Said authority includes the authority to order the provi-

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sion of security as meant in the second sentence of the first paragraph of Article 37.

2. The decision or measure shall be made or taken, respectively, in the form of an order of the arbitral tribunal.

3. The decision or measure shall in no way prejudice the final judgement of the arbitral tribunal with regard to the merits of the case.

4. The request does not preclude a party from requesting a court to grant interim measures of protection or from applying to the Preliminary Relief Judge of the District Court for a decision in summary proceedings.

### **Article 39 - Tribunal Secretary; Technical Assistance**

1. At the request of the arbitral tribunal, the Administrator shall arrange for the presence of a lawyer who acts as the secretary to the arbitral tribunal. The provisions of Articles 10 and 11 shall apply accordingly to the secretary.

2. The arbitral tribunal may request the Administrator to arrange for technical assistance in the arbitral proceedings.

### **Article 40 - Language**

1. The arbitral proceedings shall be conducted in the language or languages as agreed by the parties or, in the absence of such agreement, in the language or languages determined by the arbitral tribunal.

2. Until such time as the arbitral tribunal has determined the language or languages as referred to in paragraph (1), the Administrator may, at the request of the other party or on his own motion, require a party to provide translations of his submissions and documents in a language which the other party understands and in such form and within such period of time as the Administrator shall determine.

3. Without prejudice to the provisions of paragraphs (1) and (2), if any notice, submission or document is written in a language which the Administrator or the arbitral tribunal does not understand, the Administrator and, after its appointment, the arbitral tri-

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bunal may require the party from whom such notice, submission or document emanates to provide a translation in such language, in such form and within such period of time as the Administrator or the arbitral tribunal, as the case may be, shall determine.

4. At the request of the arbitral tribunal, the Administrator shall arrange for the presence of an interpreter at the hearing.

### **Article 41 - Third Parties**

1. A third party who has an interest in the outcome of arbitral proceedings to which these Rules apply may request the arbitral tribunal for permission to join the proceedings or to intervene therein.

2. Such request shall be filed with the Administrator in six copies. The Administrator shall communicate a copy of the request to the parties and to the arbitral tribunal.

3. A party who claims to be indemnified by a third party may serve a notice of joinder on such a party. A copy of the notice shall be sent without delay to the arbitral tribunal, the other party and the Administrator.

4. The joinder, intervention or joinder for the claim of indemnity may only be permitted by the arbitral tribunal, having heard the parties and the third party, if the third party accedes to the arbitration agreement by an agreement in writing between him and the parties to the arbitration agreement. On the grant of request for joinder, intervention or joinder for the claim of indemnity, the third party becomes a party to the arbitral proceedings.

5. In case of a request or notice as referred to in paragraphs (1) and (3), respectively, the arbitral tribunal may suspend the proceedings. After the suspension, the proceedings shall be resumed in the manner as determined by the arbitral tribunal, unless the parties have agreed otherwise.

6. The provisions on the costs of the arbitration contained in the Sixth Section shall apply accordingly to a third party who has acceded to the arbitration agreement in accordance with the provisions of paragraph (4).

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### **Article 42 - Non-Compliance of a Party with Provisions Contained in Section Four**

If a party does not comply, or complies insufficiently, with any provision contained in this Section, or with an order, decision or measure issued by the arbitral tribunal pursuant to this Section, the arbitral tribunal may draw therefrom the conclusions it deems appropriate.

#### **SECTION FOUR A - SUMMARY ARBITRAL PROCEEDINGS**

##### **Art. 42a - In General, Relationship with Article 37 Procedure**

1. In cases where, considering the interests of the parties, an immediate provisional measure is urgently required, a request for such measures may be heard and decided in summary arbitral proceedings, in accordance with the provisions of this Section.
2. If, however, an arbitration between the same parties has been commenced and the appointment of the arbitrators has been confirmed by the Administrator in accordance with Article 15(1), the provisions of this Section do not apply and the special procedure prescribed in Article 37 of these Rules is to be followed.
3. The provisions of Section One and Sections Five through Seven apply to the procedure referred to in the first paragraph without exception. The provisions of Sections Two through Four apply only in so far as reference is made to them in this Section.
4. The provisions of this Section apply if the place of arbitration is situated within the Netherlands. If the parties have not determined the place of arbitration, Rotterdam will be the place of arbitration, for the purpose of the application of the provisions of this Section.

##### **Article 42b - Commencement**

1. Summary arbitral proceedings as meant in this Section commence by the filing of a request for summary arbitral proceedings with the NAI Secretariat. It shall be deemed to have commenced on the day the request is received by the NAI Secretariat.
2. The request shall be filed in two copies and shall be accompanied by the exhibits on which the claimant bases his claim.

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3. The request may also be commenced by fax or e-mail on the condition that after the commencement the claimant promptly transmits any exhibits in duplicate to the Administrator.

### **Article 42c - Contents of the Request**

The request shall contain the information mentioned in Article 6(3) under (a), (b), (c), (d), (e) and (i), on the condition that the brief description of the dispute be accompanied by a description of the reasons for the claim and for the purported urgency.

### **Article 42d - Notification of Request to Respondent**

1. One copy of the request, together with any exhibits shall be promptly and properly notified to each respondent.
2. Proof of the notification to each respondent shall at the latest be submitted at the hearing referred to in Article 42g(1).

### **Article 42e - Confirmation of Receipt of Request**

The Administrator shall communicate to the parties a written acknowledgement of the receipt of the request, making mention of the date of receipt.

### **Article 42f - Appointment of Arbitral Tribunal**

1. As soon as possible after the receipt of the request, the Administrator shall appoint the arbitral tribunal, consisting of a sole arbitrator, which arbitral tribunal shall decide in summary arbitral proceedings. If the parties have agreed on a method of appointment of the arbitrator or arbitrators, such method shall not apply to the appointment and the composition of the arbitral tribunal referred to in the previous sentence, unless the parties have actually agreed upon a method of appointment of a summary proceedings arbitral tribunal. No person shall be precluded from appointment as arbitrator by reason of his nationality.

2. The appointment of the arbitrator shall be confirmed by the Administrator by a letter of appointment addressed to the arbitrator.

3. Articles 10, 11, 15(2) and (3), 17 and 18(2) apply without exception. In the cases referred to in Article 18(1), the appointment of

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the new arbitrator shall take place according to the method provided in the first paragraph of this Article.

### **Article 42g - Hearing**

1. The arbitral tribunal shall determine immediately the day, time and place of the hearing for the claim in summary arbitral proceedings and shall promptly notify the parties in writing thereof.
2. Written memorials are to be filed only if the arbitral tribunal so determines, without prejudice to the provisions of Articles 42h and 42i. Article 26(3) shall apply accordingly.

### **Article 42h - Plea of Lack of Jurisdiction**

If the respondent wishes to raise the plea of lack of jurisdiction of the arbitral tribunal on the ground that there is no valid arbitration agreement, he shall raise this plea before submitting any defence at the very latest at the hearing referred to in Article 42g(1) or, if a memorial is filed prior to that hearing, at the very latest in that memorial. Article 9(3) through (6) applies.

### **Article 42i - Counterclaim**

The respondent or respondents are entitled to submit a counterclaim in summary arbitral proceedings. The counterclaim shall be made by means of a written memorial which shall be submitted to the arbitral tribunal at the latest at the hearing referred to in Article 42g(1) and copies shall be delivered either by mail or by hand to the claimant and sent to the Administrator.

### **Article 42j - Procedure**

The provisions of Articles 20, 21, 22(2), 23(1) and (3), 27 through 36, 39, 40 and 42 apply accordingly.

### **Article 42k - Referral to Arbitration on the Merits**

If the arbitral tribunal determines that the case is not sufficiently urgent or is too complicated to be decided by a provisional decision, it may reject the claim either wholly or partially and refer the parties to arbitration on the merits. An arbitration on the merits shall be commenced on the basis of Article 6 of these Rules.

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### **Article 42l - Nature of the Decision; Security**

1. A decision in summary arbitral proceedings is an arbitral award in the sense of Article 1051(3) of the Dutch Code of Civil Procedure. The provisions of Section Five of these Rules also apply.

2. The arbitral tribunal shall be authorised to order security in a form determined by it with respect to any claim or counterclaim in summary arbitral proceedings on behalf of the party making such request.

3. The arbitral tribunal may decide on the merits upon joint request of the parties. In such case, the award shall specifically mention this request and the decision shall be regarded as an award on the merits to which the provisions of Section Five apply.

### **Article 42m - Relationship with the Case on the Merits**

The provisional decision shall in no way prejudice the final decision of the arbitral tribunal that decides on the merits of the case.

### **Article 42n - Administration Costs and Deposit for Costs**

1. The provisions of Section Six apply to summary arbitral proceedings, on the condition that the administrative costs and the deposit for costs must be paid or deposited, respectively, prior to the hearing referred to in Article 42g(1) and if a counterclaim is submitted at the hearing, immediately after the hearing.

2. The arbitral tribunal shall be authorised to suspend the procedure or to withhold its decision if one of the parties has not complied with the financial obligations arising from this Article. If one party after a reminder in writing by the Administrator has not complied with its financial obligations arising from this Article, it shall be considered that the party has withdrawn its claim or counterclaim.

### **Article 42o - Interim Measures of Protection**

The submission of a claim based on this Section does not preclude a party from requesting a court to grant interim measures of protection.

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## SECTION FIVE - AWARD

### **Article 43 - Period of Time**

1. At the end of the hearing referred to in Articles 26, 37(3) and 42g(1), the arbitral tribunal shall inform the parties of the period of time within which it will make its award. If the parties have waived a hearing, as referred to in Article 26, the parties shall be informed after submission of the last memorial. The arbitral tribunal shall be authorised, if necessary, to extend the period of time one or more times. In all cases the arbitral tribunal shall decide with all due despatch.

2. The mandate of the arbitral tribunal shall last until it has rendered its last final award, without prejudice to the provisions of Articles 52 and 53.

### **Article 44 - Types of Awards**

The arbitral tribunal may render a final award, a partial award, or an interim award without prejudice to the powers of the arbitral tribunal referred to in Articles 37(1) and (5), 42a(1) and 42l.

### **Article 45 - Decision According to Rules of Law or as Amiable Compositeur**

1. The arbitral tribunal shall decide as amiable compositeur unless the parties agreed to authorise it to make its award in accordance with the rules of law.

2. In an international arbitration, the arbitral tribunal shall make its award in accordance with the rules of law unless the parties agreed to authorise it to decide as amiable compositeur.

### **Article 46 - Applicable Law**

If a choice of law is made by the parties, the arbitral tribunal shall make its award in accordance with the rules of law chosen by the parties. Failing such choice of law, the arbitral tribunal shall make its award in accordance with the rules of law which it considers appropriate.

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### **Article 47 - Trade Usages**

In all cases the arbitral tribunal shall take into account any applicable trade usages.

### **Article 48 - Decision-Making; Signing of Award**

1. If the arbitral tribunal is composed of more than one arbitrator, it shall decide by a majority of votes.
2. If a minority of the arbitrators refuses to sign, the other arbitrators shall make mention thereof beneath the award signed by them. This statement shall also be signed by them.
3. If a minority of the arbitrators is incapable of signing and it is unlikely that this impediment will cease to exist within a reasonable time, the provisions of the previous paragraph shall apply accordingly.
4. No mention shall be made in the award of the opinion of a minority of the arbitrators. In an international arbitration, however, a minority may express its opinion to the other arbitrators and to the parties, in a separate document. This document shall not be deemed to form part of the award.

### **Article 49 - Form and Contents of Award**

1. The arbitral award shall be recorded in writing in four copies and signed by the arbitrator(s), having regard to the provisions of Article 48(2) and (3).
2. The arbitral award shall contain in any case:
  - (a) the name and domicile or actual residence of the arbitrator(s);
  - (b) the name and domicile, seat or actual residence of the parties;
  - (c) a short summary of the procedure;
  - (d) a description of the claim and a description of the counterclaim, if any;
  - (e) the reasons for the decision given in the award;

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- (f) the determination and award of the arbitration costs referred to in Article 61;
- (g) the mention whether, in accordance with the provisions of Article 45, the arbitral tribunal decided in accordance with the rules of law or as amiable compositeur;
- (h) the decision;
- (i) the place where the award is made, which is at the same time the place of arbitration referred to in Article 22; and
- (j) the date on which the award is made.

3. If the award is a decision in summary arbitral proceedings, a partial final award or an interim award, the determination and award of the arbitration costs referred to in the previous paragraph under (f) may be reserved until later in the proceedings.

4. As soon as possible after being signed, the copies of the award shall be communicated to the Administrator.

### **Article 50 - Notification and Deposit of Award**

1. Upon receipt of the award the Administrator, on behalf of the arbitral tribunal, shall ensure that without delay:

(a) a copy of the award is communicated to each of the parties by registered mail;

(b) an award in summary arbitral proceedings or a final award, or partial final award, rendered in the Netherlands is deposited with the registry of the District Court within whose district the place of arbitration is located.

2. The Administrator shall inform the parties and the arbitral tribunal as soon as possible in writing of the date of the deposit mentioned in the previous paragraph under (b).

3. A copy of the award shall be kept in the archives of the NAI for a period of ten years. During this period, parties may request the Administrator for a certified copy of their award, against payment of the costs therefor.

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### **Article 51 - Res Judicata of Award**

An arbitral award shall bind the parties from the day it is rendered. By agreeing to arbitration by the NAI or in accordance with the NAI Rules, the parties shall be deemed to have undertaken to carry out the resulting award without delay.

### **Article 52 - Rectification or Correction of Award**

1. No later than 30 days after the date of deposit referred to in Article 50(1)(b), a party may request the arbitral tribunal to rectify a manifest computation or clerical error in an award.

2. If the details referred to in Article 49(2)(a) (b), (i) and (j) are stated incorrectly or are partially or wholly absent from an award, a party may, no later than 30 days after the date of deposit of an award referred to in Article 50(1)(b), request that the arbitral tribunal correct the mistake or omission.

3. This request shall be submitted to the Administrator in writing, in five copies. The Administrator shall communicate a copy of the request to the other party and to the arbitral tribunal.

4. The arbitral tribunal may, also on its own initiative, no later than 30 days after the date of deposit of an award referred to in Article 50(1)(b), make the rectification referred to in paragraph (1), or the correction referred to in paragraph (2).

5. In the event that the arbitral tribunal makes the rectification or correction, it shall record it in a separate document which shall be deemed to form part of the award. This document shall be made in four copies and shall contain:

(a) the details referred to in Article 49(2)(a) and (b);

(b) a reference to the award to which the rectification or correction pertains;

(c) the rectification or correction;

(d) the date of rectification or correction, provided that the date of the award to which the rectification or correction pertains shall remain conclusive;

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(e) a signature to which the provisions of Article 48 apply.

6. The document referred to in the previous paragraph shall be communicated to the Administrator as soon as possible after it is signed. The Administrator shall communicate it to the parties and deposit it with the registry of the District Court; the provisions of Article 50 shall apply accordingly. The document shall be attached to the copies of the arbitral award to which it pertains.

7. If the arbitral tribunal denies the request for rectification or correction, it shall inform the parties in writing thereof through the intermediary of the Administrator.

8. In case of an interim arbitral award, the provisions of this Article shall apply accordingly, it being understood that the request referred to in paragraphs (1) and (2) may be made no later than thirty days after receipt of the award.

### **Article 53 - Additional Award**

1. If the arbitral tribunal has failed to decide on one or more matters which have been submitted to it, a party may, no later than thirty days after the date of deposit of an award referred to in Article 50(1)(b), request the arbitral tribunal to render an additional award.

2. This request shall be submitted to the Administrator in writing, in five copies. The Administrator shall communicate a copy of the request to the other party and to the arbitral tribunal.

3. Before deciding on the request, the arbitral tribunal shall give the parties the opportunity to be heard.

4. An additional award shall be regarded as an arbitral award to which the provisions of this Section shall apply.

5. If the arbitral tribunal rejects the request for an additional award, it shall inform the parties in writing through the intermediary of the Administrator. A copy of this notification, signed by an arbitrator or by the secretary of the arbitral tribunal, shall be deposited with the registry of the District Court, in accordance with the provisions of Article 50(1)(b). The provisions of Article 50(2) and (3) shall apply accordingly.

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### **Article 54 - Arbitral Award on Agreed Terms**

1. If during the arbitration proceedings the parties reach a settlement, the contents thereof may, at their joint request, be recorded in an arbitral award. The arbitral tribunal may deny the request without giving reasons.

2. An arbitral award recording a settlement between parties shall be regarded as an arbitral award to which the provisions of this Section apply, provided that:

(a) notwithstanding the provisions of Article 49(2)(e), the award does not need to contain reasons; and

(b) the award is also signed by the parties.

### **Article 55 - Confidentiality and Secrecy; Publication of Award**

1. Arbitration is confidential and all individuals involved either directly or indirectly are bound to secrecy, save and insofar as disclosure ensues from the law or the agreement of the parties.

2. Unless a party communicates in writing to the Administrator his objections thereto within one month after receipt of the award, the NAI shall be authorised to have the award published without mentioning the names of the parties and deleting any further details that might disclose the identity of the parties.

## **SECTION SIX - COSTS**

### **Article 56 - Costs in General**

The costs of the arbitration shall include the costs referred to in Articles 57, 58 and 60 as well as the other costs which in the opinion of the arbitral tribunal were necessarily incurred in the arbitration.

### **Article 57 - Administration Costs**

1. Upon commencement of the arbitration, a fixed amount for administration costs shall be due from the claimant to the NAI, to be determined in accordance with the provisions of the next paragraph. The Administrator shall notify the claimant of this amount as soon as possible after receipt of the request for arbitration.

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2. The administration costs shall be determined on the basis of a schedule fixed by the Governing Board, which schedule is contained in the Appendix to these Rules. This schedule may be revised from time to time by the Governing Board in accordance with the provisions of Article 67. If the administration costs cannot be determined on the basis of said schedule, the Administrator shall decide thereon.

3. In case of a counterclaim, such to include a conditional counterclaim, administration costs shall also be due from the respondent, to be determined in accordance with the provisions of the previous paragraph.

4. In case a claim or counterclaim is increased, additional administration costs, to be determined in accordance with the provisions of paragraph (2), shall be due from the claimant or the respondent, respectively.

5. The Administrator shall be in charge of collecting the administration costs that are due. If a party fails, within 14 days after a second reminder in writing by the Administrator, to pay the administration costs due, he shall be deemed to have withdrawn his claim or counterclaim, as the case may be.

6. If a claimant withdraws his request for arbitration before transmission of the arbitration file to the arbitrator(s), half of the administration costs as paid by him shall be reimbursed to him. The same shall apply if a respondent withdraws his counterclaim before transmission of the arbitration file to the arbitrator(s). In all other cases, no administration costs will be reimbursed.

7. If parties have agreed only to appointment of arbitrator(s) by the NAI as referred to in Article 14(7), half of the administration costs shall be due from the petitioner.

### **Article 58 - Fees and Disbursements of Arbitrators**

1. The fees of the arbitrator(s) shall be determined by the Administrator after consultation with the arbitrator(s). In determining the fees, the time spent on the case by the arbitrator(s), the amount in dispute and the complexity of the case shall be taken into account.

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2. The disbursements of an arbitrator include, among other things, reasonable costs for travel and lodging; secretarial assistance; conference rooms; mailing and telephone, fax and e-mail.

### **Article 59 - Deposit for Costs**

1. The Administrator shall be authorised to require that the claimant pays a deposit from which, to the extent possible, the fees and disbursements of the arbitrator(s) are to be paid. If the respondent has introduced a counterclaim, such to include a conditional counterclaim, the Administrator may require him to pay a deposit as well.

2. The deposit referred to in the previous paragraph shall also serve to pay the costs of depositing the award at the registry of the District Court. The costs of a secretary, an expert appointed by the arbitral tribunal, technical assistance and interpreter shall also be paid from the deposit, if and to the extent that such costs were incurred by the arbitral tribunal.

3. As soon as possible after the arbitration file is transmitted to it, the arbitral tribunal shall consult with the Administrator on the expected volume of work for the purpose of determining the amount of the deposit.

4. The Administrator may at all times require that the claimant and/or the respondent pay an additional deposit.

5. The Administrator shall notify the arbitral tribunal of the deposit.

6. The arbitral tribunal shall be authorised to suspend the arbitration with regard to the claim or counterclaim, including a claim or counterclaim in summary arbitral proceedings as referred to in Article 37(2) until the party concerned has paid the deposit for costs required of him. If, within 14 days after a second reminder in writing by the Administrator, a party does not pay the deposit required of him, he shall be deemed to have withdrawn his claim or counterclaim, as the case may be.

7. The NAI shall not be liable for payment of any costs which are not covered by a deposit. No interest shall be paid on the amount of a deposit.

## **NAI ARBITRATION RULES**

### **Article 60 - Costs of Legal Assistance**

The arbitral tribunal may award against the losing party the costs of legal assistance incurred by the party in whose favour the award is rendered if and to the extent that these costs are deemed necessary by the arbitral tribunal.

### **Article 61 - Determination and Award of Costs**

1. The arbitral tribunal shall determine the costs of the arbitration, having regard to the provisions of Article 58(1).

2. The losing party shall be ordered to bear the costs, except in special cases at the discretion of the arbitral tribunal. If both parties have lost in part, the arbitral tribunal may divide the costs between them, wholly or in part.

3. In awarding the costs, the arbitral tribunal shall take into account the deposit made in accordance with Article 59. To the extent that a deposit made by a party is used to pay costs that were awarded against the other party in accordance with the provisions of the previous paragraph, the latter party shall be ordered to reimburse the former party for these costs.

4. Costs may also be awarded if they were not expressly claimed by a party.

### **Article 62 - Costs in Case of Premature Termination**

1. If an arbitrator is released from his mandate before the last final award, he may claim reasonable compensation for the work performed by him, with the exception of special circumstances as determined by the Administrator. This compensation shall be determined by the Administrator and shall fall under the costs of the arbitration. It will be included by the arbitral tribunal in the determination and award of costs in accordance with the provisions of Article 61.

2. If the mandate of the arbitral tribunal is terminated before the last final award, the arbitrator or arbitrators may also claim reasonable compensation for the work performed by them, to be determined by the Administrator, unless termination takes place on the ground that the mandate was performed in an unacceptably slow manner.

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3. In case of a decision that jurisdiction is lacking, the provisions of this Article shall apply accordingly, provided that the costs as determined shall be awarded against the claimant.

### SECTION SEVEN - FINAL PROVISIONS

#### **Article 63 - Violation of Rules**

In case of an action violating any provision of these Rules or a failure to act in accordance with any provision of these Rules, a party shall object thereto in writing as soon as possible after the violation became known to him, on pain of being barred from doing so thereafter, in the arbitral proceedings or in court proceedings.

#### **Article 64 - District Court Preliminary Relief Judge having Jurisdiction**

If the place of arbitration is within the Netherlands, the Preliminary Relief Judge of the District Court of Rotterdam shall have jurisdiction in the matters referred to in Article 1027(3) CCP with regard to the appointment of the arbitrator(s), Article 1028 CCP with regard to the privileged position of a party in the appointment of the arbitrator(s), Article 1035(2) CCP with regard to the challenge of an arbitrator, and Article 1041(2) CCP with regard to the examination of an unwilling witness.

#### **Article 65 - Unforeseen Matters**

In all matters not provided for in these Rules, the spirit of these Rules shall be followed.

#### **Article 66 - Exclusion of Liability**

Neither the NAI, its board members and personnel, the arbitrator and his secretary, if any, nor any other individuals involved in the matter by any of these shall be liable under contract or otherwise for any act or omission by that individual or any other individual or due to use of any aids in or involving arbitration, unless and in so far as mandatory Dutch law precludes exoneration. Neither the NAI, its board members nor its personnel shall be liable for payment of any sum that is not covered by the deposit.

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### **Article 67 - Amendment of Rules**

1. The Governing Board may at all times amend these Rules. Such amendments shall have no effect with regard to arbitrations that have already been commenced.
2. These Rules shall apply in the form as they are in force at the time the arbitration is commenced.





